



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/148059

PRELIMINARY RECITALS

Pursuant to a petition filed March 13, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, a hearing was held on April 23, 2013, at Racine, Wisconsin.

The issue for determination is whether Petitioner has submitted evidence sufficient to demonstrate that Family Care program is to pay for supportive home care services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Stephanie Edel
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County. She is enrolled in the Family Care program.
2. Petitioner lives in the community with her long-term partner, Sebastian. They have been in relationship to more than 20 years. Petitioner filed this hearing request seeking payment from the Family Care program to him for all of the care that he provides to her.

3. The case management organization (CMO) declined to pay Petitioner's partner for any of the care that he provides. The cares for which payment was sought were supportive home care services. The CMO concluded that the request was for payment for the sort of tasks that a family member routinely due for another family member.
4. After the initial decision to deny the requested payment and subsequent the appeal, Petitioner's circumstances changed. Her partner to obtain employment and he is no longer in the house as many hours per week as he had been. The CMO reevaluated the circumstances and approved 45 minutes per day of meal preparation services for Petitioner five days per week. Petitioner's daughter is paid for the meal preparation.

DISCUSSION

The Family Care Program, which is supervised by the Department of Health and Family Services, is designed to provide appropriate long-term care services for elderly or disabled adults. *Medicaid Eligibility Handbook (MEH)*, §29.1. It is authorized under Wisconsin Statutes, §46.286, and is described comprehensively in the *Wisconsin Administrative Code at Chapter DHS 10*. The program is operated and administered in each county by a Care Management Organization (CMO), which in this case is Community Care, Inc. Though Family Care enrollees are full partners in the assessment of needs and strengths and in the development of care plans those plans are subject to the general requirements and limitations outlined for the program, including the requirement that a service be cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes. *Wis. Admin. Code*, §§ DHS 10.44(2)(e) & (f). Medical assistance and its subprograms are meant to provide only basic and necessary health care.

In the Family Care Program (FCP), a case management organization (CMO) must develop an Individual Service Plan (ISP) in partnership with the client. *Wis. Admin. Code*, §DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the client's long-term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the CMO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. *Wis. Admin. Code*, §DHS 10.44(2)(f); *DHS booklet, Being a Full Partner in Family Care, page 9*.

Petitioner filed this appeal seeking payment to Sebastian for the care he provides to her. There are Guidelines for Paying Family Caregivers established by DHS. These guidelines can be found online at: <http://www.dhs.wisconsin.gov/lc/PDFs/famcaregvr.pdf>. Relevant portions of those guidelines state as follows:

Part I. Competency of and Accountability for Work Performed by Paid Family Caregivers

...

B. Family Care Policy. A person in the member's family, including the spouse of a member, shall be paid by the MCO for services if the interdisciplinary team (IDT) authorizes the service. The IDT need to take into consideration the following when deciding whether or not to authorize the service (these conditions are found in the MCO contract): . . .

3. The family member will either:

- a. Provide an amount of service that exceeds normal family caregiving responsibilities for a person in a similar family relationship who does not have a disability; or
- b. Find it necessary to forego paid employment in order to provide the service and is not receiving a pension (including Social Security retirement benefits).

...

Part III. Authorizing Types of Services, Number of Hours and Reimbursement for Paid Family Caregivers.

...

B. Family Care Policy. When a member requests that a family member be paid to provide a needed service, the following rules apply (see MCO contract):

1. If the team is allowed by the MCO to authorize this request, the team must, in conjunction with the member, use the RAD or another standardized decision making guidelines that have been approved by the Department to make the decision.

...

3. If the team, using the RAD, has determined that the service itself is not necessary or appropriate and therefore declines to provide or authorize the service, the request for payment to a family member to provide the service should also be denied. When the team denies the service and/or the request to have the family member provide the care, the team must give the member written notice of the decision.

4. If the team has decided that the service is necessary, based on the RAD method, then the team must also use the RAD to determine whether or not to have the family member act as the caregiver. The guidelines described below may assist with the decision.

C. Guidelines for authorizing types of services, number of hours and rate of pay for family caregivers.

...

2. Types of Services. In general, family members may be compensated for services/supports needed that exceed the typical care-giving/support responsibilities for any family member of the same age and could be considered a “special care-giving responsibility” due to the member’s disability.

a. Family members can be informed that, typically, the MCO does not pay family members for activities that a relative/family member would normally provide for another family member as a matter of course in the usual relationship among members of a family.

- Services that are typically assumed to be the responsibility of family members are routine laundry, meal preparation, shopping, usual cleaning, general supervision, non-medical supervision, assisting with mobility, companionship and transportation/escorting.
- Services that are considered to exceed the typical care-giving/support responsibilities of a family member are toileting, bathing (other than set-up), other personal care the member is unable to do for himself or herself, frequent laundry due to incontinence/illness, medical miles (these should be billed to a common carrier/MA), complete transfer assist, or other unique services that may be considered by the IDT for consumer-specific situations.

b. If the member becomes ill, there may be an occasional need to perform certain “hands on tasks”, i.e., assistance with bathing, cooking special meals, checking

on the individual during the night, etc. When these types of services go from occasional to routine, the team may wish to revisit a decision not to pay the family member for providing them.

...

This case does not seem to have been particularly well-developed prior to the hearing. Petitioner's request, as noted above, was for payment to her partner. At the hearing Petitioner stated, in essence, that she does not think it fair that he care for her without some payment as he is not legally obligated to help her. While she is happy to have some help with meals she does not believe enough time is provided but without detail.

I am sustaining the denial of payment for supportive home services at this time. As Petitioner and her partner are not married there is a question here as to who is considered a family member. I do not find a definition in the *Wis. Admin. Code, §DHS Chapter 10*, the Standard Contract between the Department and CMOs (found at <http://www.dhs.wisconsin.gov/mltc/2013/2013Contract.htm>) or the guidelines cited above. Nonetheless, while Sebastian is not legally related to Petitioner, it does not make sense for the Family Care program to pay a household member to perform tasks, e.g., cleaning, grocery shopping, etc.; that they benefit from. A not dissimilar program, IRIS, has a policy with reasoning relevant here. IRIS policy, SC 16.1 describes goods, support and services not covered by IRIS, including:

- Goods, supports and services that are not directly related to participant goals or needs, or those that primarily benefit someone else.
(*Emphasis added*)

As to meals, Petitioner allows that she can use a microwave but she cannot stand long enough to cook a meal at the stove. There is no detail as to why 45 minutes per day, especially as averaged over the week, is not sufficient to prepare meals.

At the hearing Petitioner did, however, bring up what seems to be a new concern – she stated that she is independent at her ADLs except for bathing. While she can wash herself she is unsteady at getting in and out of her bath/shower to the extent that she is at risk of falling. She did fall in November 2012 and was hospitalized for 16 days as a result of injuries sustained in the fall. Petitioner may want to formally ask the CMO for personal care assistance that activity and if the request is denied she may request another hearing.

CONCLUSIONS OF LAW

That Petitioner has not submitted evidence sufficient to demonstrate that Family Care program is to pay for supportive home care services.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

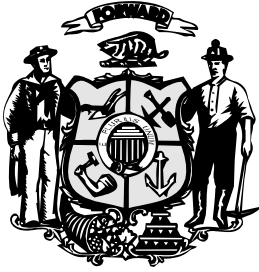
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of May, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 30, 2013.

Community Care Inc.
Office of Family Care Expansion